

21 C.J.S. Courts § 334

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Courts

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X. Clerks of Courts

C. Powers and Duties

§ 334. Powers and duties of court clerks, generally

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Clerks of Courts](#)  64.1, 65

Although the legislature may prescribe the duties of clerks of court, there is authority holding that if the legislature enacts statutory duties for the court clerk that conflict with the supreme court's enumeration of duties in court rules, the court rules prevail.

Generally, the legislature is empowered, within constitutional limits, to prescribe the duties of clerks of courts.¹ It has been held that a court is not free to displace duties that the legislature statutorily requires to be performed by the clerk of court by reassigning those duties to the court's bailiff.² On the other hand, there is also authority holding that the clerk's noncustodial ministerial duties are a matter of court procedure and administration; thus, should the legislature enact statutory duties for the court clerk that conflict with the supreme court's enumeration of duties in court rules, the court rules must prevail.³ According to this view, the court's authority, at least with regard to the clerk's performance of noncustodial ministerial duties, includes the discretion to create duties, abolish duties, or divide duties between the clerk and other court personnel, as well as the right to dictate the scope and form of the performance of such duties.⁴

The clerk's acts performed within the scope of the clerk's official duties are the acts of the court.⁵ To be binding on others, the clerk's acts must be in conformity with governing statutes.⁶ A court clerk has no power to disregard the limitations on her or his power imposed by statute or rule.⁷

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Footnotes

1 Cal.—*St. John v. Superior Court*, 87 Cal. App. 3d 30, 150 Cal. Rptr. 697 (4th Dist. 1978).

2 Neb.—*Nye v. Fire Group Partnership*, 263 Neb. 735, 642 N.W.2d 149 (2002).

3 Mich.—*Lapeer County Clerk v. Lapeer Circuit Court*, 469 Mich. 146, 665 N.W.2d 452 (2003).

4 Mich.—*Lapeer County Clerk v. Lapeer Circuit Court*, 469 Mich. 146, 665 N.W.2d 452 (2003).

5 Fla.—*Nation v. Nation*, 404 So. 2d 394 (Fla. 5th DCA 1981).

La.—*Danna v. Yazoo & M.V.R. Co.*, 154 So. 365 (La. Ct. App. 2d Cir. 1934).

6 Fla.—*Overholser v. Overstreet*, 383 So. 2d 953 (Fla. 3d DCA 1980).

7 Cal.—*People v. Funches*, 67 Cal. App. 4th 240, 78 Cal. Rptr. 2d 882 (2d Dist. 1998).

Constitutional limits on ministerial functions

Requirement that clerk issue marriage licenses to same sex couples was a ministerial duty and did not implicate clerk's constitutional right to religious freedom.

U.S.—*Miller v. Davis*, 123 F. Supp. 3d 924 (E.D. Ky. 2015).

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